

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO. 2 OF 2024

IN

APPEAL NO. 98 OF 2023

IN

INTERIM APPLICATION NO. 1609 OF 2023

IN

SUIT NO. 443 OF 2022

Khurshid Mohammed Nazir Khokar & Anr

...Petitioners

Versus

Heena Parvez Khokar & Anr

...Respondents

Mr Manoj Shukla, *with Anand Upadhyay, for the Petitioners.*

Mr Ajeet Manwani, *with Faisal Vora, Aditi K, i/b A&A Legal, for the
Respondents.*

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**CORAM. DEVENDRA KUMAR UPADHYAYA, CJ &
ARIF S. DOCTOR, J**

DATED. 22nd November 2024.

PC:-

1. By the captioned Review Petition, the Petitioners (the Defendants in the captioned Suit) seeks review of an order dated 12th April 2024,

by which this Court had allowed the Appeal filed by the Respondents herein (the Plaintiffs in the captioned Suit) by ordering as follows:

“i. The Impugned Order dated 30th June, 2023 is hereby quashed and set aside.

ii. The Interim Application is remitted back to the learned Judge before whom the assignment presently lies to hear and decide the Interim Application after considering the documents relied upon by the Appellants.

iii. The hearing of the Suit is expedited.

iv. It is noticed that despite the fact that the Suit is of the year 2023, no written statement has been filed within the prescribed time. Hence, the Suit to proceed ex parte.

v. The learned Judge to issue appropriate directions for the expeditious hearing and disposal of the captioned Suit.”

2. The primary grievance of Mr Shukla, Learned Counsel for the Review Petitioners is that the Review Petitioners (Defendants in the Suit) had filed an Application seeking condonation of delay in filing of the Written Statement, which was pending before the Trial Court on the date the order under review was passed. This fact was not noted in the order under review since this was not pointed out to the Court on account of oversight, lack of necessary instructions. He, however, submitted that factually this is not disputed. He submits that in this backdrop, grave prejudice would be caused to the Review Petitioners (Defendants in the Suit), if the Suit was to proceed *ex parte* as per paragraph ‘iv’ above. It is thus he submits that the order be reviewed to

reflect this fact and the Suit to proceed after the said Application for condonation of delay is heard and disposed of on its own merits.

3. Mr Manwani, Learned Counsel appearing on behalf of the Respondents (Plaintiffs in the Suit) initially opposed the Review Petition stating that there was no error apparent on the fact of record. He, however, did not dispute the fact that such an Application for condonation of delay in filing of the Written Statement was pending on the date that the order under review was passed.

4. Given this, he then submitted that the Respondents (Plaintiffs in the Suit) would not object to the said Application for condonation of delay in filing Written Statement be heard and disposed of on its own merits. He further submitted that the Review Petitioners (Defendants in the Suit) had on one ground or the other delayed hearing of the Suit and he, therefore, submitted that this Court if inclined to allow the Review Petition ought to ensure that the trial of the Suit proceeds expeditiously given the fact that the Respondents herein (Plaintiffs in the Suit) are senior citizens.

5. After having heard Learned Counsel and given that on the date of passing of the order under review, in fact, the Application for condonation of delay in filing the Written Statement was pending, we find it necessary and in the interest of justice to review our order to the limited extent as follows:

- (a) The Review Petitioners shall, within a period of one week from today, undertake to remove all office objections in

the Interim Application pending for condonation of delay in filing Written Statement on its own merits.

- (b) The Trial Court shall hear and dispose of the Interim Application within a period of two weeks from today.
- (c) The Suit shall proceed expeditiously, subject to the outcome of the aforesaid Interim Application.
- (d) The Review Petitioners shall not take time before the Trial Court on the next date.

6. Paragraph 'iv' of the order dated 12th April 2024 is thus modified accordingly. The Review Petition is disposed of accordingly.

(ARIF S. DOCTOR, J)

(CHIEF JUSTICE)